

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

**Proposing rule making related to physician assistants
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 9, “Outpatient Diabetes Education Programs,” Chapter 11, “Human Immunodeficiency Virus (HIV) Infection and Acquired Immune Deficiency Syndrome (AIDS),” Chapter 91, “Iowa Domestic Abuse Death Review Team,” Chapter 109, “Prescription Drug Donation Repository Program,” and Chapter 142, “Out-of-Hospital Do-Not-Resuscitate Orders,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 139A and sections 135.11, 135M.4, 141A.2 and 144A.7A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 135M and 139A and chapters 135, 141A and 144A as amended by 2022 Iowa Acts, House File 803.

Purpose and Summary

This proposed rule making makes changes required by 2022 Iowa Acts, House File 803, by adding a definition for “physician assistant” in Chapters 9, 11, 109, and 142 and adding provisions regarding physician assistants in specific rules in Chapters 9, 11, 91, 109 and 142.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 6, 2022. Comments should be directed to:

Susan Dixon
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: susan.dixon@idph.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **641—9.2(135)**, definition of “Diabetes mellitus,” as follows:

“*Diabetes mellitus*” includes the following:

1. “Type I diabetes” means insulin-dependent diabetes (IDDM) requiring lifelong treatment with insulin.
2. “Type II diabetes” means noninsulin-dependent diabetes often managed by food plan, exercise, weight control, and in some instances, oral medications or insulin.
3. “Gestational diabetes” means diabetes diagnosed during pregnancy.
4. “Impaired glucose tolerance” means a condition in which blood glucose levels are higher than normal, diagnosed by a physician or physician assistant, and treated with food plan, exercise or weight control.
5. “Secondary diabetes” means diabetes induced by drugs or chemicals as well as by pancreatic or endocrine disease and treated appropriately.

ITEM 2. Adopt the following **new** definition of “Physician assistant” in rule **641—9.2(135)**:

“*Physician assistant*” means a person currently licensed under Iowa Code chapter 148C.

ITEM 3. Amend subrule 9.8(3) as follows:

9.8(3) The primary instructors shall be one or more of the following health care professionals: physicians, physician assistants, registered nurses, licensed dietitians, and pharmacists who are knowledgeable about the disease process of diabetes and the treatment of diabetes. If there is only one primary instructor, there shall be at least one supporting instructor. The supporting instructor shall be from one of the four professions listed as possible primary instructors, but a different profession from the single primary instructor.

ITEM 4. Adopt the following **new** definition of “Physician assistant” in rule **641—11.1(139A,141A)**:

“*Physician assistant*” means a person currently licensed under Iowa Code chapter 148C.

ITEM 5. Amend subrules 11.6(4) and 11.6(5) as follows:

11.6(4) Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician or physician assistant shall make a report to the department on a form provided by the department.

11.6(5) Within seven days of the death of a person with HIV infection, the attending physician or physician assistant shall make a report to the department on a form provided by the department.

ITEM 6. Amend rule 641—11.15(139A,141A) as follows:

641—11.15(139A,141A) Purpose. The purpose of rules 641—11.15(139A,141A) to 641—11.18(141A) is to establish a voluntary partner notification program, including a procedure to allow a physician, physician assistant or the department to notify an identifiable third party of an HIV-infected person

directly that the party has been exposed to HIV when the HIV-infected person will not participate in the voluntary partner notification program.

ITEM 7. Amend rule 641—11.18(141A) as follows:

641—11.18(141A) Direct notification of an identifiable third party by a physician, physician assistant or the department.

11.18(1) Direct notification shall be used when an HIV-infected person is having continuing contact with a sexual or needle-sharing partner who is unaware of the person's infection and when both of the following situations exist:

a. A physician or physician assistant for the HIV-infected person is of the good-faith opinion that the nature of the continuing contact through sexual intercourse or the sharing of drug injecting equipment poses an imminent danger of HIV transmission to the third party.

b. When the physician or physician assistant believes in good faith that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

11.18(2) The department or a physician or a physician assistant may reveal the identity of an HIV-infected person pursuant to this rule only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this rule shall be made confidentially. Nothing in this rule shall be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with an HIV-infected person.

11.18(3) When the physician or physician assistant is of the good-faith opinion and belief that third-party notification should be performed, notification of a person pursuant to this rule shall be made:

a. Directly by the physician or physician assistant in accordance with subrules 11.18(4), 11.18(5) and 11.18(7), or

b. By the department at the request of the physician or physician assistant in accordance with subrules 11.18(6) and 11.18(7).

11.18(4) Notification by the physician or physician assistant. Prior to notification of a third party by an HIV-infected person's physician or physician assistant, the physician or physician assistant shall make reasonable efforts to inform, in writing, the HIV-infected person. The written information shall state that, due to the nature of the person's continuing contact through sexual intercourse or the sharing of drug injecting equipment with the third party and the physician's or physician assistant's belief that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician or physician assistant is forced to take action to provide notification to the third party. The physician or physician assistant, when reasonably possible, shall provide the following information to the HIV-infected person:

a. The nature of the disclosure and the reason for the disclosure.

b. The anticipated date of disclosure.

c. The name of the party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the HIV-infected person shall be deemed satisfied when the physician or physician assistant delivers the written notice in person or directs a written notice to the HIV-infected person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

11.18(5) When performed by the HIV-infected person's physician or physician assistant, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the physician or physician assistant at the earliest opportunity to discuss an important health matter. The nature of the health matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.18(6) Notification by the department.

a. The physician or physician assistant attending the HIV-infected person shall provide by telephone to the department any relevant information provided by the HIV-infected person regarding any party with whom the HIV-infected person has had sexual relations or has shared drug injecting

equipment. The information may include the third party's name, address, telephone number, and any other locating information known to the physician or physician assistant. The department shall use the information in accordance with procedures established for the voluntary partner notification program.

b. No change.

11.18(7) Confidentiality. The HIV-infected person's physician or physician assistant and the department shall protect the confidentiality of the third party and the HIV-infected person. The identity of the HIV-infected person shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to HIV. If the identity of the HIV-infected person is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person infected with HIV has been disclosed to you. The confidentiality of this information is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

11.18(8) No change.

ITEM 8. Amend paragraph **91.4(1)“b”** as follows:

b. A licensed physician, physician assistant or nurse who is knowledgeable concerning domestic abuse injuries and deaths, including suicides.

ITEM 9. Adopt the following **new** definition of "Physician assistant" in rule **641—109.1(135M)**:
"Physician assistant" means an individual licensed under Iowa Code chapter 148C.

ITEM 10. Amend subrule 109.3(3) as follows:

109.3(3) A pharmacy or medical facility may elect to participate in the prescription drug donation repository program by providing, on a form prescribed by the department and available on the program's web page, written notification to the centralized repository of all of the following:

a. The name, street address, and telephone number of the pharmacy or medical facility, and any state-issued license or registration number issued to the pharmacy or medical facility, including the name of the issuing agency.

b. The name and telephone number of the responsible pharmacist, physician, physician assistant or nurse practitioner who is employed by or under contract with the pharmacy or medical facility.

c. A statement, signed and dated by the responsible pharmacist, physician, physician assistant or nurse practitioner, indicating that the pharmacy or medical facility meets the eligibility requirements under this rule and shall comply with the requirements of this chapter.

ITEM 11. Amend subrule 109.6(1) as follows:

109.6(1) Donated drugs and supplies may be dispensed only if the drugs or supplies are prescribed by a health care practitioner for use by an eligible individual and are dispensed by a licensed pharmacist, physician, physician assistant or nurse practitioner.

ITEM 12. Adopt the following **new** definition of "Attending physician assistant" in rule **641—142.1(144A)**:

"Attending physician assistant" means the physician assistant selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

ITEM 13. Amend subrule 142.3(1) as follows:

142.3(1) *OOH DNR physician or physician assistant order.* The department designates the OOH DNR order form contained in Appendix A as the uniform OOH DNR order form to be used statewide. If an attending physician or attending physician assistant issues an OOH DNR order for a qualified patient, the physician or physician assistant shall use the form contained in Appendix A.

ITEM 14. Amend subrule 142.5(1) as follows:

142.5(1) *Attending physicians or attending physician assistants who issue OOH DNR orders.* The attending physician or attending physician assistant should ensure that the following are accomplished:

- a. Establish that the patient is qualified because the patient:
 - (1) Is an adult; and
 - (2) Has a terminal condition.
- b. Explain to the patient or the individual legally authorized to act on the patient's behalf the implications of an OOH DNR order.
- c. If the qualified patient or individual legally authorized to act on the patient's behalf decides that the patient should not be resuscitated, the attending physician or attending physician assistant may issue the OOH DNR order on the prescribed uniform order form. The order will direct health care providers to withhold or withdraw resuscitation.
- d. Explain to the qualified patient or the individual legally authorized to act on the patient's behalf how the OOH DNR order is revoked.
- e. Include a copy of the order in the qualified patient's medical record.
- f. Provide a copy of the order to the qualified patient or the individual legally authorized to act on the patient's behalf.

ITEM 15. Amend subrule 142.8(1) as follows:

142.8(1) An attending physician or attending physician assistant who is unwilling to comply with an OOH DNR order or who is unwilling to comply with the provisions of Iowa Code section 144A.7A shall take all reasonable steps to effect the transfer of the patient to another physician or physician assistant.

ITEM 16. Amend **641—Chapter 142**, Appendix A and Appendix B, as follows:

APPENDIX A

Iowa Department of Public Health OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDER (Please type or print)

Date of Order: ____ / ____ / ____

Patient Information:

Name: (Last) _____ (First) _____ (Middle) _____

Address: _____ (City) _____ (Zip) _____

Date of Birth: ____ / ____ / ____ Gender (Circle): M or F

Name of Hospice or Care Facility (if applicable): _____

Attending Physician or Physician Assistant Order

As the attending physician or attending physician assistant for the above-named patient, I certify that this individual is over 18 years of age and has a terminal diagnosis. After consultation with this patient (or the patient's legal representative), I hereby direct any and all health care providers, including qualified emergency medical services (EMS) personnel, to withhold or withdraw the following life-sustaining procedures in accordance with Iowa law (Iowa Code chapter 142A):

- Cardiopulmonary Resuscitation/Cardiac Compression (Chest Compressions).
- Endotracheal Intubation/Artificial or Mechanical Ventilation (Advance Airway Management).
- Defibrillation and Related Procedures.
- Use of Resuscitation Drugs.

This directive does NOT apply to other medical interventions for comfort care.

Signature of Attending Physician (MD, DO) or
Attending Physician Assistant

_____/_____/_____
Date

Printed Name of Attending Physician or Attending
Physician Assistant

(____)____-____
Physician's or Physician Assistant's
Telephone (Emergency)

To the extent that it is possible, a person designated by the patient may revoke this order on the patient's behalf. If the patient wishes to authorize any other person(s) to revoke this order, the patient MUST list those persons' names below:

Name: _____
Name: _____
Name: _____
Name: _____

Patients, please note: Directions for obtaining a uniform identifier are listed on the back of this form. The uniform identifier is the key way the health care provider and/or EMS personnel can quickly recognize that you have an Out-of-Hospital Do-Not-Resuscitate order. If you are not wearing an identifier, the health care provider and/or EMS personnel may not realize that you do not want to be resuscitated.

Physicians or physician assistants, please note: Information regarding the completion of an Out-of-Hospital Do-Not-Resuscitate order is on the back of this form.

APPENDIX A

Directions for obtaining a uniform identifier:

The uniform identifier may be obtained through MedicAlert®¹, which requires:

1. A completed MedicAlert® application, which is available in physician or physician assistant offices or through MedicAlert® by phoning (800)432-5378 or the ~~Web site~~ website www.medicalert.org, and fee.
2. A copy of this completed OOH DNR order, which must accompany the MedicAlert® application or be sent to MedicAlert® prior to the identifier's being mailed.

¹*MedicAlert® is a nonprofit 501C membership organization.*

Suggested guidelines for physicians or physician assistants:

1. Please review the Iowa Out-of-Hospital Do-Not-Resuscitate order and related protocol with the patient/patient's legal representative(s). The following points may be helpful:
 - Patient/patient's legal representative(s) listed on this order must understand the significance of this order, that in the event the patient's heart or breathing stops or malfunctions, the anticipated result of this order is death.
 - Patient/patient's legal representative(s) listed on this order may revoke this directive at any time. However, the desire to revoke must be communicated to the EMS or other health care professionals at the scene.
 - It is important to emphasize that this order does not apply to medical interventions to make the patient more comfortable.
 - The importance of wearing the uniform identifier for those qualified patients who would benefit from the mobility this offers should be stressed. It is also helpful to walk patients through the process they must follow to acquire the identifier.
2. Provide a copy of this order to the patient/patient's legal representative(s) listed on this order and place the original in the patient's medical records.

The OOH DNR Order form is available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or through the Bureau of EMS's ~~Web site www.idph.state.ia.us/ems~~ website idph.iowa.gov/BETS/EMS/rules.

APPENDIX B

EMS OUT-OF-HOSPITAL DO-NOT-RESUSCITATE PROTOCOL

Purpose: This protocol is intended to avoid unwarranted resuscitation by emergency care providers in the out-of-hospital setting for a *qualified patient*.¹ There must be a valid Out-of-Hospital Do-Not-Resuscitate (OOH DNR) order signed by the qualified patient's attending physician or physician assistant or the presence of the OOH DNR identifier indicating the existence of a valid OOH DNR order.

No resuscitation: Means withholding any medical intervention that utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, including but not limited to:

1. Chest compressions,

2. Defibrillation,
3. Esophageal/tracheal/double-lumen airway; endotracheal intubation, or
4. Emergency drugs to alter cardiac or respiratory function or otherwise sustain life.

Patient criteria: The following patients are recognized as qualified patients to receive no resuscitation:

1. The presence of the uniform OOH DNR order or uniform OOH DNR identifier, or
2. The presence of the attending physician or attending physician assistant to provide direct verbal orders for care of the patient.

The presence of a signed physician or physician assistant order on a form other than the uniform OOH DNR order form approved by the department may be honored if approved by the service program EMS medical director. However, the immunities provided by law apply only in the presence of the uniform OOH DNR order or uniform OOH DNR identifier. When the uniform OOH DNR order or uniform OOH DNR identifier is not present, contact must be made with on-line medical control and on-line medical control must concur that no resuscitation is appropriate.

Revocation: An OOH DNR order is deemed revoked at any time that a patient, or an individual authorized to act on the patient's behalf as listed on the OOH DNR order, is able to communicate in any manner the intent that the order be revoked. The personal wishes of family members or other individuals who are not authorized in the order to act on the patient's behalf shall not supersede a valid OOH DNR order.

Comfort Care (♥): When a patient has met the criteria for no resuscitation under the foregoing information, the emergency care provider should continue to provide that care which is intended to make the patient comfortable (a.k.a. ♥ Comfort Care). Whether other types of care are indicated will depend upon individual circumstances for which medical control may be contacted by or through the responding ambulance service personnel.

♥Comfort Care may include, but is not limited to:

1. Pain medication.
2. Fluid therapy.
3. Respiratory assistance (oxygen and suctioning).

¹Qualified patient means an adult patient determined by an attending physician or attending physician assistant to be in a terminal condition for which the attending physician or attending physician assistant has issued an Out-of-Hospital DNR order in accordance with the law. (~~Iowa Administrative Code Rule 641—142.1(144A)~~, definitions)